

REMARKS

The applicants have had an opportunity to carefully consider the USPTO Office Action of February 7, 2006 and believe this amendment is fully responsive to every point raised in the Office Action. Reconsideration of the amended application is respectfully requested in view of the following remarks. Claims 16-20 and 31-56 remain in the application are added after this amendment is entered.

I. THE OFFICE ACTION

Claims 16-20 are allowed.

Claims 31-54 stand provisionally rejected for non-statutory obviousness-type double patenting over claims 1-11, 14-20, 23, 26-29, 32, 34, and 39 of co-pending U.S. patent application serial no. 11/157,089 to Morris et al (Morris II). Morris II claims priority to the present application (i.e., Morris I) as a continuation-in-part (CIP).

Claims 55 and 56 stand rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,349,724 to Burton et al. (Burton).

II. THE NON-ART REJECTIONS

Obviousness-Type Double Patenting Rejections are Overcome by Terminal Disclaimer.

An accompanying Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection Over a Pending “Reference” Application is providing in response to the USPTO’s rejection of claims 31-54 on obviousness-type double patenting grounds over Morris II. Accordingly, the applicants respectfully submit that claims 31-54 are currently in condition for allowance and request that the USPTO withdraw the rejection obviousness-type double patenting rejection.

III. THE ART REJECTIONS

Claims 55 and 56 Patentably Distinguish Over Burton.

Claim 55 is directed to an apparatus for providing a breathing gas that includes: a variable speed blower, a sensor, and a controller. As recited in the claim, the controller is “adapted to i) adjust the speed of the blower ... during an inhalation state of a breathing cycle, ii) detects a transition from the inhalation state to an exhalation state of the breathing

cycle, iii) reduce the blower speed for a first time portion of the exhalation state ..., and iv) increase the blower speed for a second time portion of the exhalation state" Notably, during the same breathing cycle, the controller adjusts the speed of the blower during the inhalation state, during a first portion of the exhalation state, and again during a second portion of the exhalation state.

Similarly, claim 56 is directed to an apparatus for providing a breathing gas that includes: "means for adjusting a blower speed ... during an inhalation state of a breathing cycle, means for detecting a transition from the inhalation state to an exhalation state of the breathing cycle, means for reducing the blower speed ... for a first time portion of the exhalation state, and means for increasing the blower speed ... for a second time portion of the exhalation state." Notably, during the same breathing cycle, the blower speed is adjusted during the inhalation state, during a first portion of the exhalation state, and again during a second portion of the exhalation state.

Burton discloses a positive air pressure device with a dual-pressure blower and two air pressure chambers. The dual-pressure blower supplies air at two different pressures to the two air pressure chambers. The two air pressure chambers selectively supply air at one pressure during inspiration of a breathing cycle and at another pressure during expiration of the breathing cycle. Valves on the two air pressure chambers select which gas pressure is supplied to the patient during the breathing cycle. (Abstract) In one embodiment, Burton discloses a variable speed motor which permits the high and low pressures to be varied with changes in motor speed. However, the ratio of the two pressures is maintained with changes in motor speed because the high and low pressures are simultaneously increased or decreased. (col. 4, lines 35-45) Notably, Burton does not teach or fairly suggest varying the pressure during expiration by reducing the blower speed for a first time portion of the exhalation state and increasing the blower speed for a second time portion of the exhalation state. Moreover, Burton does not teach or fairly suggest changing from an inspiration pressure to an expiration pressure by changing the blower speed. Rather, Burton may vary the blower speed in conjunction with treatment protocols where the pressure is slowly increased to a desired pressure over time as the patient falls asleep. (col. 7, lines 6-17) In summary, Burton does not teach or fairly suggest varying the motor speed to control the pressure during the breathing cycle, such as varying the motor speed during first and second portions of exhalation or varying the motor speed between inhalation and exhalation.

Based on the foregoing, claims 55 and 56 are patentably distinct from Burton. Accordingly, the applicants respectfully submit that claims 55 and 56 are currently in condition for allowance.

CONCLUSION

Based on the foregoing remarks, the applicants believe that all of the claims in this application (i.e., claims 16-20 and 31-56) are now in condition for allowance and an indication to that effect is earnestly solicited. Furthermore, if the USPTO believes that additional discussions or information might advance the prosecution of this application, the USPTO should feel free to contact the undersigned at the telephone number indicated below.

Respectfully submitted,

Date: 7 June 2006



Alan C. Brandt

Alan C. Brandt, Reg. No. 50,218
(216) 622-8658
(216) 241-0816 facsimile